

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	17 March 2011
Report of:	Greenspaces Manager
Subject/Title:	Highways Act 1980 S119 Application for the Diversion of part of Public Footpath No. 8 in the Parish of Rainow

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 8 in the Parish of Rainow. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit in the interests of the public and in the interests of the owner of the land crossed by the path. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 8 in the parish of Rainow by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/037 on the grounds that it is expedient in the interests of the public and in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the public and in the interests of the owner of the land crossed by the path for the reasons set out in paragraph 10.7 below.

3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
- The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.

3.4 Initial informal consultations have not indicated that objections to an order are likely. Diverting the footpath onto the proposed route would create a more accessible, usable footpath, with a level surface, less path furniture and an increased width. It would also provide better views of the surrounding countryside for walkers and lead to savings for the authority's maintenance budget. In addition, moving the footpath away from the landowners home (Burton Springs Farm) will allow him to improve the privacy and security of his property. The diversion has been sought by the Council to resolve long-standing problems with the footpath, and to create a more accessible, usable route on the ground for the public. It is considered that the proposed diversion follows the best possible route available. It is therefore considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

3.0 Wards Affected

4.1 Bollington and Disley.

5.0 Local Ward Members

5.1 Councillor M Davies, Councillor D Thompson and Councillor H Davenport.

6.0 Policy Implications including - Climate change - Health

6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:

- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'
- Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'

6.2 The development of new walking, cycling and horseriding routes for local residents and visitors alike is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Health and Wellbeing Service commitment to the Change4Life initiative.

7.0 Financial Implications

7.1 Not applicable

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

9.0 Risk Management

9.1 Not applicable

10.0 Background and Options

10.1 The agreement of the landowner to the diversion of part of Public Footpath No. 8 in the parish of Rainow has been obtained. Under Section 119 of the Highways Act 1980 the Borough Council may make a Diversion Order if it considers that it is expedient in the interests of the public or of the owner, lessee or occupier of the land crossed by the path.

10.2 Public Footpath No. 8 Rainow commences at its junction with Footpath No. 6 Rainow at OS grid reference SJ 9802 7646 and runs in a generally north westerly direction to OS grid reference SJ 9788 7682 and its junction with Bank Lane. The section of path to be diverted is shown by a solid black line

on Plan HA/037 running between points A-D. The proposed diversion is illustrated on the same plan between points A-E.

- 10.3 Mr Christopher Leek owns the land over which the current route and the proposed route would run. He has provided written consent and support for the proposal.
- 10.4 The existing definitive line of Public Footpath No. 8 Rainow has been unavailable for numerous years. It is difficult for the public to use due to the nature of the terrain and it is possible that the path was inaccurately recorded on the Definitive Map and Statement in the first place.
- 10.5 The current line of the footpath runs in a northerly direction across a field and then through the garden to the rear of Burton Springs Farm. It passes in extremely close proximity to the house, directly alongside numerous windows of the property. This section of the footpath is also very narrow, approximately 1 metre, and enclosed on both sides, by the wall of the house on the eastern side and a retaining garden wall to the west of the property.
- 10.6 As the footpath leaves the garden area there is a steep bank to climb, with a gradient of approximately 1:2. It then crosses another field with a cross slope which is difficult to traverse due to its gradient, which is approximately 1:4. As it reaches Bank Lane there is another steep bank for users to descend. The definitive line is obstructed by walls and fences in a number of places. Re-instating the footpath on the original alignment would be expensive for the authorities' maintenance budget, three stiles or gates would be required (at points B, C and D on Plan No. HA/037), as well as approximately 15 steps up the bank leading from the garden (point C on Plan No. HA/037). Approximately 4-6 steps down the steep bank to Bank Lane (at point D on Plan No. HA/037) would also be required. The length of the section of footpath to be diverted is approximately 171 metres.
- 10.7 The proposed route runs in a north easterly direction across a field to the east of Burton Springs Farm until it reaches Bank Lane. There are no steep sections for walkers to traverse and it offers a level surface. It also requires only one kissing gate (where the path reaches Bank Lane at point E on Plan No. HA/037) providing a much more easily accessible route for walkers. The proposed route would be unenclosed with a width of two metres, providing an increased width. It also offers better open views of the surrounding countryside. The length of the proposed route for the footpath is approximately 130 metres, 41 metres shorter than the current route. In addition, the proposal moves the footpath closer to Public Footpath Rainow No. 83, creating a useful link for walkers. Taking walkers away from Burton Springs Farm will allow the landowner to improve the privacy and security of his property considerably.
- 10.8 Ward Councillors have been consulted about the proposal. No comments have been received.
- 10.9 Rainow Parish Council has been consulted. They have responded to state that they agree to the proposed changes but stress the need for a stile/gate,

and for clear signposting at both ends of the diversion. If a diversion Order is made and is successful, a kissing gate will be installed at point E on plan no. HA/037 and the route will be appropriately signposted.

- 10.10 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.11 The user groups have been consulted. Peak and Northern Footpaths Society have responded to state that they have no objection to the proposal. The Ramblers Association have responded to state that they 'welcome this suggested solution to a long standing problem at Burton Springs Farm', provided that some improvement to the surface is carried out and the new route appropriately signed. Before signing the Article 2 'Certificate of Satisfaction' and confirming an Order, Cheshire East Council would ensure that any necessary surfacing works are carried out on the new route to bring it up to an acceptable standard and that the route is appropriately signed.
- 10.12 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.13 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Network and Enforcement Officer for the area and it is considered that the proposed diversion is an improvement on the old route.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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